COMMERCE—STATE REGULATION OF INTERSTATE RATES ON RAILROAD OWNED BY STATE.—The state of Georgia owned a railway running from Atlanta to Chattanooga, which it leased to defendant company under the terms of a statute which provided that the lessee should be subject to and required to observe and obey all just and reasonabl rules, orders, schedules of freight and passenger tariffs as might be prescribed by the state and Railroad Commission, and should charge no higher rate for through freight than the local rate allowed and fixed for similar freight by the Railroad Commission. The lease to the defendant company expressly provided that the provisions of the act should be binding on the company. The state fixed rates for the defendant, but it refused to abide by them, filed other rates with the Interstate Commission, and charged a higher rate for through freight than the rate for local freight prescribed by the Railroad Commission. The state brought this action to enjoin the defendant from charging higher rates than those pre-
Commission, and charged a higher rate for through freight
scribed by the state, and to compel the defendant to file with the Interstate Commission, the rates fixed by the state. *Held* that this was an attempt by the state to regulate interstate commerce and was void; and that the rates fixed by the state were not binding on the defendant by virtue of the contract between the state and the railroad as lessor and lessee. *State* v. *Western and A. R. Co.* (Ga., 1912) 76 S. E. 577.

The contention of the state was that it could operate the road, and file and abide by its prescribed rates, and that as it had a valid contract with the defendant to abide by these rates, it could compel the defendant to do so. In *Louisville and N. R. Co.* v. *Railroad Commisssioners of Tennessee,* 19 Fed. 679, there is a dictum to the effect that possibly if an incorporator agrees with the state in consideration of the grant of a franchise, to establish a certain schedule of rates for the transportation of goods in interstate commerce over the road, the company so incorporated would be bound by it. Not because the state could prescribe the rates as an exercise of its municipal power, but because the incorporators, as owners have established these rates. In *Iron Mountain Railroad Co.* v. *Memphis,* 96 Fed. 113, the railroad bound itself by contract not to discriminate against the city of Memphis. Later the city council passed a resolution that the railroad was discriminating against the city on rates to points in other states, and that the railroad must reduce the rates or forfeit its rights under the contract. This was held not an attempt to regulate interstate commerce, but an attempt to enforce a legal contract. In *Railroad Co.* v. *Maryland,* 88 U. S. 456, relied upon by the state, a statute creating a railroad corporation provided that the road charge $2.50 for each passenger from Baltimore to Washington, D. C., and that one-fifth of the receipts should be paid to the state. In a suit to recover this amount, the statute was held unconstitutional, but the question as to the limiting of the fare was not involved or considered. The case relied upon by the court in giving its decision, *Louisville & N. R. Co.* v. *Mottley,* 219 U. S. 467, involved a contract by which the road agreed to issue annual passes to certain persons for their lives, which contract was made illegal by an act of Congress forbidding the giving of interstate passes. In that case it was held that

the contract thereby became void. It is submitted that that case is distinguishable from the principal case in that it would apparently not be illegal for the defendant in the principal case to file and abide by the schedule fixed by the state.

CONSTITUTIONAL LAW—REQUIRING CARRIERS TO GRANT FREE TRANSPORTATION TO POLICE.—Defendant was convicted of assault and battery upon a member of the police force of Jersey City, and justified upon the ground that the latter was lawfully ejected by defendant, acting as servant of the street railway company, for refusal to pay fare. This defense was met by the act of 1912 requiring street railways to grant free transportation of uniformed public officers while engaged in the performance of their duties and of detectives whose duties require police duty to be performed without uniform. There was no question that the policeman came within the provisions of the act, but its constitutionality is questioned because it is said to take the railroad's property without compensation. *Held* that the law is constitutional. *State* v. *Sutton* (N. J. 1912), 84 Atl. 1057.

In *Wilson* v. *United Traction Co.* 72 App. Div. 233, 76 N. Y. Supp. 203 the court held a statute providing for the riding of policemen and firemen without charge on street railroads unconstitutional, saying "The only advantage secured by the act to the public is that the railroad company instead of the municipality pays the fare. Such an advantage may be a public convenience, but the right to take the property of the individual citizen or of a class for the sole reason that the proceeds of it would be convenient to aid the municipality in defraying its general expenses, has not yet been conceded as a legitimate exercise of the police power, and we are not disposed to concede it now." An act requiring the transportation of school children at half fare—less than cost—was held constitutional in *Interstate Consolidated Ry. Co.* v. *Massachusetts,* 207 U. S. 79, 28 Sup. Ct. 26, 52 L. Ed. 111. But in the latter case it was said; "A majority of the court considers that the case is disposed of by the fact that the statute in question was in force when he plaintiff in error took its charter, and confines itself to that ground." In the principal case the court based its opinion on the following grounds: (1) the company did really receive some indirect compensation in the protection afforded by the mere presence of the officer, (2) the statute in question was a valid exercise of the police power, (3) for many years both prior and subsequent to the incorporation of the company it had been customary to carry policemen free. As to the first point it would scarcely seem to be such a compensation for the taking of private property as the law requires. The second point is sufficiently answered by the quotation from *Wilson* v. *United Traction Co., supra.* As the third, it is difficult to see why, if the custom referred to was expected to bind, it was not included in the terms of the franchise. The scarcity of decisions on this particular point is probably accounted for by the fact that such provisions have generally been expressed in the franchise or in statutes in force at the time of granting the franchise.

CONTRACT OF INFANT—DUTY TO RETURN CONSIDERATION UPON DISAFFIRMANCE.—Plaintiff purchased hay from the defendant, who was an infant en-